

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

December 8, 2005

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

JOHN J. STECH,
employed by EIGHTY-FOUR MINING CO.

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Docket No. PENN 2005-232
A.C. No. 36-00958-58520 A

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On August 8, 2005, the Commission received a motion made by counsel on behalf of John J. Stech, employed by Eighty-Four Mining Co., to reopen a penalty assessment against Stech under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). Counsel filed an amended motion on August 12, 2005.

Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

On June 6, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) mailed a proposed penalty assessment to Stech alleging that he was personally liable under section 110(c) of the Mine Act for a citation (No. 7018563) issued to his employer, Eighty-Four Mining Co. Am. Mot. at 1-2. MSHA mailed the proposed penalty assessment to Stech at the office of his counsel, though addressed simply to Stech, not to or in care of counsel.

Id. at Ex. 1.¹

Stech's counsel states that the return receipt for the proposed assessment indicates that it was delivered to and signed for by Penny Reddy, who according to counsel is employed by a company in the same building as his firm, but which is on a different floor altogether and is not related to his firm in any way. *Id.* at 2. Counsel for Stech only learned of the proposed assessment on August 1, 2005 when counsel for the Secretary in a related matter provided him a copy. *Id.* In his motion, Stech states that he "intended to contest the penalty and underlying citation." *Id.* The Secretary does not oppose Stech's request for relief.

Here, the proposed penalty assessment was delivered to the wrong address. Under these circumstances, we conclude that Stech was not notified of the penalty assessment, within the meaning of the Commission's Procedural Rules, until at least August 1, 2005. In his motion to reopen this matter, filed with the Commission on August 8, 2005, Stech clearly states his intent to contest the proposed penalty assessment against him. We conclude from this that Stech timely notified the Secretary that he wished to contest the proposed penalty, once he had actual notice of the proposed assessment. *Id.*

¹ In another case we are deciding today, *Neil et al. employed by Elk Run Coal Co.*, Docket Nos. WEVA 2005-173 through WEVA 2005-176, we note that Commission Procedural Rule 25 states that the "Secretary, by certified mail, shall notify . . . any other person against whom a penalty is proposed of the violation alleged." Slip op. at 2 (citing 29 C.F.R. § 2700.25). In *Neil*, and now in this case, confusion has arisen from the manner in which proposed penalty assessments were sent to section 110(c) respondents. If the Secretary had sent the penalty proposal at issue here to Stech at his home address or "in care of" counsel at counsel's address, the confusion would presumably have been avoided.

Accordingly, the proposed penalty assessment is not a final order of the Commission. We remand this matter to the Chief Administrative Law Judge for assignment to a judge. This case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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